



# Department of Justice

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## **DEPARTMENT OF JUSTICE, FEDERAL TRADE COMMISSION ISSUE JOINT STATEMENT ON CERTIFICATE-OF-NEED LAWS IN ILLINOIS**

*Agencies Say CON Laws Undercut Consumer Choice, Stifle Innovation and  
Weaken Markets' Ability to Contain Health Care Costs*

WASHINGTON — In a joint statement to the Illinois Task Force on Health Planning Reform, the Department of Justice and the Federal Trade Commission (FTC) stated the agencies' position regarding certificate-of-need (CON) laws, saying that the laws undercut consumer choice, stifle innovation and weaken markets' ability to contain health care costs. Today's statement reiterates the agencies' ongoing efforts to promote competition in health care.

State CON programs generally prevent firms from entering certain areas of the health care market unless they can demonstrate to state authorities that there is an unmet need for their services.

The task force is considering eliminating or amending Illinois' CON requirements. The agencies were asked by the task force to present their views at a meeting to be held in Chicago on Sept. 15, 2008. A representative from the Department will speak at the meeting.

In the joint statement, the agencies said that CON laws impede the efficient performance of health care markets by creating barriers to entry and expansion, to the detriment of health care competition and consumers.

"The Antitrust Division is committed to providing guidance on how to promote competition in the health care industry," said Thomas O. Barnett, Assistant Attorney General in charge of the Department's Antitrust Division. "Competition in this important industry benefits consumers by offering lower prices and better quality services."

The statement describes economic research on the effects of CON laws, as well as some of the risks that CON laws can entail. For example, in addition to limiting entry, CON laws create opportunities for existing competitors to exploit the CON process to thwart or delay new competition; they can facilitate anticompetitive agreements among providers; and the CON process itself may be susceptible to corruption.

FTC Chairman William Kovacic underscored the importance of health care competition, stating that, "The health care industry provides us all with fundamental services at significant

and vulnerable times. Vigorous competition can promote greater access to cost-effective, high-quality health care.”

The joint statement also evaluates several arguments in support of CON laws, noting that the original cost-control reasons for CON laws no longer apply and that CON laws are an ineffective means to fund indigent care. For these reasons, the agencies encourage members of the Illinois task force – as well as officials in other states that continue to require certificates of need – to consider whether such laws do more harm than good.

Today’s statement is based on the agencies’ extensive experience with CON laws. The agencies jointly conducted hearings on issues in health care competition, including CON laws, in 2003; those hearings, and related research, led to a 2004 report, *Improving Health Care: A Dose of Competition*, which observed that, “on balance, CON programs are not successful in containing health care costs, and that they pose serious anticompetitive risks that usually outweigh their purported economic benefits.” Today’s statement is based on that report and more recent economic studies. Recently, the agencies have provided similar statements to the General Assembly and the Senate of the state of Georgia; the Committee on Health, Education and Social Services of the Alaska House of Representatives; and the Florida Senate Committee on Health and Human Services Appropriations.

A copy of today’s joint statement is available on the Department of Justice’s Web site at [www.usdoj.gov/atr](http://www.usdoj.gov/atr). Hard copies of the statement are also available from the Justice Department’s Antitrust Documents Group. The Antitrust Documents Group can be contacted on 202-514-2481, fax: 202-514-3763, or e-mail: [www.atrdocs.grp@usdoj.gov](mailto:www.atrdocs.grp@usdoj.gov).

DOJ PRESS CONTACT: Gina Talamona, Office of Public Affairs  
202-514-2007

FTC PRESS CONTACT: Mitch Katz, Office of Public Affairs  
202-326-2180

DOJ STAFF CONTACT: Joe Miller, Assistant Chief, Litigation I Section  
202-307-0001

FTC STAFF CONTACT: Daniel J. Gilman, Office of Policy Planning  
202-326-3136

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